

ASSEMBLY BILL

No. 251

Introduced by Assembly Member DeSaulnier

February 1, 2007

An act to amend Sections 501 and 506 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 251, as introduced, DeSaulnier. Corporations: distributions.

Existing law, the General Corporation Law, provides for the operation of a corporation, including distributions made to its shareholders. Under existing law, a corporation and its subsidiaries are prohibited from making a distribution if doing so would make the corporation or its subsidiary unable to meet liabilities as they mature. Existing law makes a shareholder who receives a prohibited distribution, with knowledge of its impropriety, liable to the corporation for the amount received, plus interest.

This bill would additionally prohibit a corporation and its subsidiaries from making a distribution if either has failed to make a payment under a defined benefit plan, as defined, owed by the corporation or subsidiary. The bill would also make a board member of the corporation who receives a distribution prohibited by this provision liable to the corporation for the amount received, plus interest, regardless of whether he or she had knowledge of its impropriety.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 501 of the Corporations Code is amended
2 to read:

3 501. (a) Neither a corporation nor any of its subsidiaries shall
4 make ~~any~~ a distribution to the corporation's shareholders ~~(Section~~
5 ~~166)~~, *as defined in Section 166*, if the corporation or the subsidiary
6 making the distribution is, or as a result thereof would be, likely
7 to be unable to meet its liabilities (except those whose payment is
8 otherwise adequately provided for) as they mature.

9 (b) *Notwithstanding any other provision of law, neither a*
10 *corporation nor any of its subsidiaries shall make a distribution*
11 *to the corporation's shareholders, as defined in Section 166, if the*
12 *corporation or the subsidiary making the distribution has failed*
13 *to make a payment under a defined benefit plan, as defined by*
14 *subsection (j) of Section 414 of Title 26 of the United States Code,*
15 *owed by the corporation or the subsidiary.*

16 SEC. 2. Section 506 of the Corporations Code is amended to
17 read:

18 506. (a) ~~Any~~(1) A shareholder who receives ~~any~~ a distribution
19 prohibited by this chapter with knowledge of facts indicating the
20 impropriety thereof is liable to the corporation for the benefit of
21 all of the creditors or shareholders entitled to institute an action
22 under subdivision (b) for the amount so received by the shareholder
23 with interest thereon at the legal rate on judgments until paid, but
24 not exceeding the liabilities of the corporation owed to
25 nonconsenting creditors at the time of the violation and the injury
26 suffered by nonconsenting shareholders, as the case may be. For
27 purposes of this chapter, ~~in the event that any~~ if a shareholder
28 receives ~~any~~ a distribution of the corporation's property that is
29 prohibited by this chapter, the shareholder receiving that illegal
30 distribution shall be liable to the corporation for an amount equal
31 to the fair market value of the property at the time of the illegal
32 distribution plus interest thereon from the date of the distribution
33 at the legal rate on judgments until paid, together with all
34 reasonably incurred costs of appraisal or other valuation, if any,
35 of that property, but not exceeding the liabilities of the corporation
36 owed to nonconsenting creditors at the time of the violation and
37 the injury suffered by nonconsenting shareholders, as the case may
38 be.

1 (2) *A board member of the corporation who receives a*
2 *distribution in violation of subdivision (b) of Section 501 with or*
3 *without knowledge of facts indicating its impropriety is subject to*
4 *the same liability as imposed on a shareholder who receives a*
5 *distribution with knowledge of its impropriety, as described in*
6 *paragraph (1).*

7 (b) Suit may be brought in the name of the corporation to enforce
8 the liability (1) to creditors arising under subdivision (a) for a
9 violation of Section 500 or 501 against any or all shareholders
10 liable by any one or more creditors of the corporation whose debts
11 or claims arose prior to the time of the distribution to shareholders
12 and who have not consented thereto, whether or not they have
13 reduced their claims to judgment, or (2) to shareholders arising
14 under subdivision (a) for a violation of Section 502 or 503 against
15 any or all shareholders liable by any one or more holders of
16 preferred shares outstanding at the time of the distribution who
17 have not consented thereto, without regard to the provisions of
18 Section 800.

19 (c) ~~Any~~ A shareholder sued under this section may implead all
20 other shareholders liable under this section and may compel
21 contribution, either in that action or in an independent action
22 against shareholders not joined in that action.

23 (d) Nothing contained in this section affects ~~any~~ *the* liability
24 ~~which any~~ *that a* shareholder may have under Chapter 1
25 (commencing with Section 3439) of Title 2 of Part 2 of Division
26 4 of the Civil Code.